

ADOT JPA File No.: JPA 01-195  
**Amendment No. 1**  
AG Contract No.: KR02-0770TRN  
Project No.: TEA-FLA-0(004)A  
Project: Multiuse Path  
Section: US 89; Railhead-Snowflake Rd.  
**TRACS No.: SL460 01C**  
Budget Source Item No.: N/A

**AMENDMENT No. 1  
TO  
INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF FLAGSTAFF

**THIS AGREEMENT** is entered into this date 24 May, 2006, **Amendment One** to JPA 01-195, AG Contract No: KR02-0770TRN, filed with the Secretary of State under No. 25893, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE CITY OF FLAGSTAFF acting by and through its MAYOR and CITY COUNCIL (the "City").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

**THE PURPOSE OF THIS AMENDMENT** is with the consent and approval of the FHWA and the State, using Arizona Procurement Procedures; the City of Flagstaff has been approved to self-administer the Project.

**THEREFORE**, in consideration of the mutual Agreements expressed herein, this Agreement is amended as follows:

NO. 25893  
Filed with the Secretary of State  
Date Filed: 5/24/06  
Janice K. Brewer  
Secretary of State  
By: [Signature]

**Article I, Paragraph 7 is deleted and replace as follows:**

7. The work embraced in this Agreement is for the design, construction and maintenance of a Multi-use pathway and landscaping along the pathway and existing medians. The Multiuse pathway will be on the west side of US 89 between Railhead and Snowflake Streets, heading north approx. 5,765 feet, herein referred to as the "Project." The estimated costs are as follows:

**Construction TRACS No. SL460 01C****\*Total Estimated Cost of the Project****\$ 1,024,400.00**

Federal-aid funds @ 94.3%

\$ 500,000.00 (capped)

**Estimated City of Flagstaff Funds****\$ 524,400.00**

\*(Includes construction, construction engineering and administrative costs)

**II. SCOPE OF WORK****Article II, Paragraphs 1 through 6 are deleted and replace in full as follows:**

## 1. The City shall:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction, using Procurement Procedures. Incorporate or resolve State's review comments.

b. With the aid and consent of FHWA, use State of Arizona Procurement Procedures; proceed to advertise for, receive and open bids. Subject to the concurrence of the State and the FHWA, enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Said Project is to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the State and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The City will confer with the State on any Project-related contract modifications; be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason attributable to the City.

c. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. FHWA will participate in the construction administration costs provided by the City up to 94.3% of the total Project costs up to \$500,000.00.

d. Acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid. Remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction.

e. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

f. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur and will pay for said increased costs, including those exceeding maximum federal funds available. Such changes require the prior approval of the State.

g. After the award of the construction contract(s), invoice the State for federal funds progress payments for 94.3% of the direct cost of construction, construction engineering and administration, not to exceed the capped federal funds of \$500,000.00. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement, whether covered by federal funding or not.

h. Upon completion of construction, the City shall provide for, at its own costs and as an annual item in its budget, proper maintenance of the improvements. This agreement may be assumed by another entity under the same stipulations.

i. Complete the Project in accordance with approved plans and specifications and the requirements of the relevant State and Federal statutes, rules or regulations. In the event the City fails to comply with the plans, specifications or any relevant State or Federal statutes, rules and regulations, the City shall hold the State harmless from any claims or costs incurred by the City.

j. State employees may perform any inspections of the Project or audit any books or records of the City in order to ensure that funds have been spent and the Project completed in accordance with the plans and specifications, or any relevant State or Federal statutes, rules or regulations.

2. The State shall:

a. Agree to be the City's authorized agent for the Project and submit a request containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designate the City to self-administer the Project.

c. Upon execution of this Agreement, make progress payments to the City for 94.3% of the direct cost of construction, construction engineering and administration, not to exceed the capped federal funds of \$500,000.00. Said payments will be within thirty days (30) after receipt and approval of invoice.

d. Not be obligated to maintain said Project should the City fail to budget or provide perpetual and proper maintenance as set forth in this Agreement.

### **III. MISCELLANEOUS PROVISIONS**

**Article III, Paragraphs 10 and 11 are added in full as follows:**

10. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".


11. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised as a result of termination under this paragraph.

**EXCEPT AS AMENDED** herein, **ALL OTHER** terms and conditions of the original Agreement remain in full force and effect.

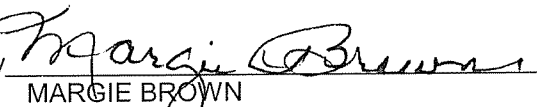
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**IN WITNESS WHEREOF**, the parties have executed this agreement the day and year first above written.

**CITY OF FLAGSTAFF**

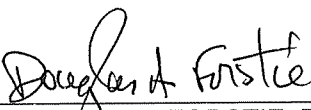
By   
JOSEPH C. DONALDSON  
Mayor

ATTEST:

By   
MARGIE BROWN  
City Clerk

**STATE OF ARIZONA**

Department of Transportation

By   
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

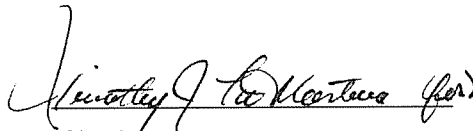
**JPA 01-195**  
**AMENDMENT NO. 1**

**APPROVAL OF THE CITY OF FLAGSTAFF**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 19<sup>th</sup> day of April, 2006.

  
City Attorney

## **CITY OF FLAGSTAFF STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council

**From:** Randall E. Groth, Project Manager 226-4858  
Community Development Department

**Date:** April 12, 2006

**Meeting Date:** May 2, 2006



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**Title:** Resolution No. 2006-35: A RESOLUTION APPROVING AMENDMENT NO. 1 TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF FLAGSTAFF FOR THE CONSTRUCTION OF PATH AND LANDSCAPE ENHANCEMENTS FOR THE US 89 HIGHWAY CORRIDOR.

### **Recommended Action:**

Read Resolution No. 2006-35

Adopt Resolution No. 2006-35

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### **ACTION SUMMARY:**

Adoption of Resolution No. 2006-35 amends Intergovernmental Agreement: AG Contract No. KR02-0770TRN to authorize the City to contract and self administer the construction contract for the project.

### **DISCUSSION:**

#### **Background/History:**

The City and ADOT entered into an Intergovernmental Agreement (IGA) on March 19, 2003 to construct a multi-purpose path and landscaping enhancements adjacent to US 89 North from Railhead Avenue to Snowflake Drive. In the IGA, the City agreed to designate the State as their authorized agent and ADOT was slated to perform the construction administration and to supervise and inspect the construction. The FHWA committed \$500,000 in enhancement funds to the project.

#### **Key Considerations:**

An Intergovernmental Agreement (AG Contract No. KR04-0457TRN) between the State of Arizona and the City was entered into on August 20, 2004. In this IGA, various sections of ADOT rights-of-way were transferred to the City including the section of State Route US 89 from milepost 418.74 to milepost 420.33. This location includes the area from Railhead Avenue to Snowflake Drive where the proposed path and landscape enhancements are to be built.

Due to the ADOT transfer of the route rights-of-way, the responsibility for project delivery as described in the IGA of March 19, 2003 requires an amendment to officially reassign project delivery responsibility to the City as a result of the IGA of August 20, 2004. City staff has already taken responsibility for the project and have been performing the project delivery tasks for the past number of months.

**Community Benefits and Considerations:**

Acceptance of the IGA Amendment will formalize the transfer of project delivery responsibilities to the City thereby allowing uninterrupted progress on the proposed improvements and allow the project to continue without disruption. The construction of this segment of trail provides a major link in the FUTS network. The link positions the FUTS to connect with proposed and pending city, USFS and Arizona Trail sections.

**Community Involvement:**

There has been no specific public involvement relating to this amendment.

**Financial Implications:**

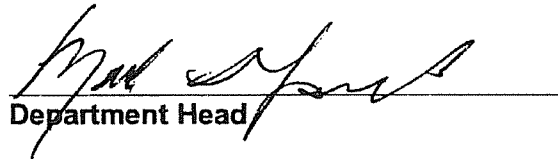
The US 89 North Streetscape project is funded by a TEA-21 grant, Transportation Safety Tax and BBB Revenues. The project is budgeted in the amount of \$1,048,498 (acct. # 051-7439-631) for FY 05/06, including the \$500,000 FHWA enhancement funding.



**Options and Alternatives:**

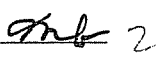
1. Adopt the resolution as recommended.


**Attachments/Exhibits:**

1. Vicinity Map
2. Resolution
3. Copy of Amendment No. 1 to the IGA (AG Contract No. KR02-0770TRN)
4. Copy of Original IGA (AG Contract No. KR02-0770TRN)

  
Department Head

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
	BIDS/PURCHASES			FINANCE/BUDGET	
	GRANTS/CONTRACTS			IGAS	
	LEGAL	4/19/06		Common. Imp. Director	4/18/06
				4/17/06	

DATE OF COUNCIL APPROVAL: 5-2-06 

<p><b>TERRY GODDARD</b> Attorney General</p>	 <p><b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR02-0770TRN (**JPA 01-195, Amendment No. 1**), an Agreement between public agencies, i.e., The State of Arizona and The City of Flagstaff, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 17, 2006

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:961015  
Attachment